



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 13-01053
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Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

03/14/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by her financial problems. She acted responsibly in addressing her debts, which arose from circumstances beyond her control. Her current finances are sound. Clearance is granted.

Statement of the Case

On October 23, 2013, Department of Defense (DOD) adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines¹ for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case

¹ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

was assigned to me on December 11, 2013, and I convened a hearing on January 22, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 4, which were admitted without objection. Applicant testified, presented two witnesses, and proffered Applicant's Exhibits (Ax.) A - C, which were admitted without objection. I left the record open after the hearing to receive from Applicant additional relevant information. Applicant's timely post-hearing submission was admitted without objection as Ax. D. DOHA received the transcript of hearing (Tr.) on February 6, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant had incurred 24 delinquent debts totaling \$47,826 (SOR 1.a - 1.x). SOR 1.b (IRS debt for \$20,823) constitutes about 44 percent of the total debt alleged. SOR 1.u alleges a \$9,125 debt remaining after a car repossession. SOR 1.g - 1.m, 1.v, and 1.m allege unpaid medical bills totaling \$4,475. The remaining debts are for credit cards and payday loans. Applicant admitted, with explanations, all of the allegations. In addition to her admissions, I make the following findings of fact.

Applicant is a 46-year-old employee of a defense contractor. Before being hired by her current employer in 2011, Applicant and her husband worked for about 25 years in the mortgage lending industry. Between 2006 and 2009, their income began to fall as a result of the collapse of the real estate market and its financial infrastructure. Applicant last worked in mortgage lending in November 2009, when she became unemployed for about six months. Before then, her annual income had fallen from about \$150,000 to about \$70,000. In April 2010, Applicant found steady work in the hotel sales industry, but her income was still significantly less than before. (Answer; Gx. 1; Gx. 2; Ax. A; Tr. 49 - 51, 55)

Applicant has been married twice. Her first marriage began in February 1986 and ended in divorce in February 2000. Applicant and her current husband have been married since June 2001. He was also in the mortgage lending business and suffered a similar loss of income when the market collapsed. However, Applicant was making almost twice what her husband earned when the downturn occurred. He was unemployed only briefly before returning to work in the trucking industry, where he had worked before his career in mortgage lending. Applicant's husband now works in car sales and earns a base annual salary of about \$47,000. With commissions, he earned about \$65,000 in 2013. (Answer; Gx. 1; Tr. 51 - 52)

Applicant and her first husband had two children, now adults. Between 2005 and 2010, both children were attending college and relied on Applicant for financial support. Applicant and her second husband are paying off student loans they obtained for her children's tuition and other expenses. Those loans have always been in good standing. Applicant and her second husband also brought substantial debt to their marriage, as both had been left with obligations from previous marriages. They were able to resolve those debts without assistance before the real estate market collapsed and they experienced their current financial problems. (Gx. 2 - 4; Ax. C; Tr. 53 - 54, 77)

Applicant and her family have had numerous health problems. She has had a stroke and has survived cancer twice. Her younger child took five years to complete college because of serious illness. Her second husband also had a heart attack. Applicant's first husband left when he could no longer deal with the stress of their medical problems. He did not pay child support as required when their children were minors. The medical debts alleged in the SOR are for medical expenses that Applicant's insurance did not cover. They became delinquent in 2009 and 2010, when Applicant was unemployed. (Answer; Gx. 2 - 4; Tr. 68 - 70)

Applicant's financial problems first arose in about 2006 and 2007, when her and her husband's incomes were declining. They changed employers several times because mortgage lending firms often went out of business at the time. They had expenses associated with their medical problems, as well as her children's tuition and related expenses. They turned to credit cards and payday loans to cover their expenses. Most of the delinquencies alleged in the SOR resulted when they became unemployed in 2009. After once again finding work, Applicant started contacting their creditors to negotiate resolution of their past-due debts. However, most demanded lump-sum payments Applicant could not afford. Thereafter, her debts went largely unresolved until recently, because she was not aware of any programs that would allow her to address old debts through affordable payments. (Answer; Gx. 2; Tr. 66 - 68)

In December 2013, a friend referred Applicant to a non-profit consumer credit counseling agency. Applicant was able to establish a 57-month debt management plan (DMP) to consolidate and repay her past-due debts. Applicant pays \$385 monthly for all of the debts alleged in the SOR except 1.a and 1.b (IRS issues discussed below), and SOR 1.j, 1.n, 1.o, and 1.q, which total \$6,177. SOR 1.j, 1.n, and 1.o were not included because they could not be verified by the counseling agency. The SOR 1.q debt had already been included through a different collection agency. (Ax. C; Ax. D; Tr. 44 - 47, 70 - 73)

In 2007, Applicant and her husband left a mortgage lending firm for a better opportunity at mortgage lender "A." When they left to join A, they were paid in lump sum for several pending sales and commissions still in the "pipeline." Industry practice at the time called for a new employer (in this case, mortgage lender A) to pay the income taxes on the pipeline income as an incentive for individuals to change employment. Applicant and her husband thought A would pay their pipeline taxes after they had worked there for a year. Applicant worked at A until November 2009, when that firm went out of business. In 2010, Applicant and her husband received a W-2 form stating that their income for 2009 included the pipeline income from the employer they left in 2007. This resulted in the \$20,823 tax debt to the IRS alleged in SOR 1.b. When Applicant received the W-2, she and her husband began working with the IRS to verify their liability for this debt and to establish a repayment plan. Since September 2012, they have been paying \$370 each month to the IRS. As of this hearing, they were negotiating a revision to the plan that would stop interest accrual and enable them to repay principal only. (Gx. 2; Ax. C; Ax. D; Tr. 27 - 28, 40 - 44)

As alleged in SOR 1.a, Applicant and her husband did not file their 2009 tax return on time. They could only explain that it was due to oversight at a time when they were out of work and trying to straighten out their financial problems. SOR 1.a also alleged that they were late in filing their 2011 tax return, but Applicant established that it was timely filed. Applicant and her husband are current in their IRS repayment plan and in their federal and state tax filing obligations. (Answer; Ax. B; Ax. D; Tr. 56 - 58)

Applicant and her husband have a positive cash flow each month after expenses. A personal financial statement (PFS) submitted in July 2013 showed they had about \$420 remaining each month after expenses, including their IRS payment. A similar statement generated through their credit counseling agency in December 2013 reflected a remainder of about \$315 each month after expenses, including the \$385 DMP payment. As of the hearing, Applicant's income had increased by \$500 each month. She estimates she and her husband now have between \$500 and \$700 remaining each month. (Gx. 2; Ax. D; Tr. 74)

Applicant has an outstanding reputation in the workplace and in her community for honesty, reliability, and integrity. Her supervisors and co-workers are aware of her financial problems and her efforts to resolve them. They recommend without reservation that she be given a security clearance. Applicant's performance in her current employment has been excellent. (Ax. A; Tr. 82 - 94)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,² and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they

² See Directive. 6.3.

represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁴

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁵

Analysis

Financial Considerations

The Government's information is sufficient to support the all of the SOR allegations. The facts established raise a security concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; AG ¶ 2(b).

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); 19(c) (*a history of not meeting financial obligations*), and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*). Applicant incurred significant unpaid debt between 2006 and 2012. She also did not file her 2009 tax return on time. However, as to application of AG ¶ 19(a), Applicant was willing but largely unable to repay many of her debts.

By contrast, the record also requires application of the following AG ¶ 20 mitigating conditions:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant incurred her debts because of a collapse of the industry in which both she and her husband worked for most of their adult lives. Additionally, most of her debt stems from an unexpected tax liability and medical issues over the past ten years. Applicant has been proactive in trying to resolve her financial problems. As soon as she was faced with additional taxes on her pipeline income, she contacted the IRS and reached a repayment agreement. She has been making those payments since late 2012. She is still negotiating a reasonable agreement with the IRS that may help her repay that obligation sooner than expected. Although Applicant only recently embarked on a DMP for her remaining debts, she had tried, unsuccessfully, to negotiate with her creditors as early as 2009. Applicant is now engaged with an effective credit counseling agency to resolve her debts, and she is using a budget to manage her finances. She and her husband have steady and significant income that yields a positive monthly cash flow after expenses, which include payments to resolve all but 13 percent of the total debt at issue here. Their financial improvement will help them avoid a recurrence of the financial problems reflected in the Government's information.

Based on all of the foregoing, Applicant's information supports application of AG ¶¶ 20(a) - 20(d). The security concerns raised by Applicant's past-due debts are mitigated.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a mature, responsible adult. Her record in the workplace, in her personal life, and in her community all reflect sound judgment, reliability, and trustworthiness. Applicant did not incur her financial problems through any misconduct or irresponsible behavior. She has been candid and forthright about her finances at all times during the current investigation and adjudication of her clearance suitability. She also has been proactive in her efforts to resolve her debts and to restore her financial health. The circumstances underlying the adverse information in her background are not likely to recur. A fair and commonsense assessment of all available information shows the Government's security concerns have been satisfied.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a - 1.x:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge